

5) Please type the answer to Question 5 below.

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When finished with this question, click to advance to the next question.
(Essay)

===== Start of Answer #5 (1015 words) =====

Duty of Loyalty

An attorney has a duty of loyalty to his client, and must zealously represent his clients interests without the interference of the interests of his own or others. The facts state that Len met with Claire, they discussed her case at length, he agreed to take her case, took possession of her property, and they properly executed a retainer agreement. Thus, Len has entered an attorney-client relationship with Claire and owes her a duty of loyalty.

Concurrent Conflicts of Interest

A concurrent conflict of interest exists when there exists an actual or potential conflict of interest between the attorney's client's interests, and the interests of himself, another client or a third party, that threatens to substantially interfere with the attorney's loyalty to his client. If a conflict or potential conflict exists, it must be disclosed and avoided appropriately, and if it cannot be, an attorney may be required to withdraw from representation if it will not unfairly prejudice his client.

Personal Relationship w/ Attorney on Opposite Side of Litigation

An attorney who has a personal relationship with the attorney on an opposing side of litigation represents a conflict of interest. Generally, an attorney with a family member or close familial relationship will meet this threshold. Under ABA Rules, an attorney is not required to withdraw from representation per se, but must fully disclose to his client and the court the relationship. In California, the disclosure must be in writing and presented to both sets of clients.

Here, the facts tell us that the Hotel's lawyer, Hannah, is Len's former fiancée.

While they are no longer engaged, this relationship likely constitutes a close familial relationship that creates a potential concurrent conflict. While this would not likely prevent Len from representing Claire entirely, he would be required to disclose this fact to Claire and the court, and Hannah would be under a similar obligation to do so for her client. There is no indication that Len ever notified Claire or the court, in writing or otherwise of this conflict. Thus, we have a concurrent conflict and a likely violation of the ABA and CA rules.

Avoiding Concurrent Conflict

Under the ABA Rules, an attorney can still undertake representation despite an existence of a concurrent conflict, provided he reasonably believes he can represent the client fairly, and provides written disclosure to his client. In California, the standard does not include a "reasonable lawyer" standard, and also requires informed, written consent to all parties.

Here, we have already established that there is a conflict and Len has not disclosed it. It is unclear whether Len reasonably believes he can represent Claire, as it is clear based on his conduct that he has no desire to do so. Nonetheless, he has failed to take the necessary steps to avoid a concurrent conflict of interest, and this violates ABA and CA Rules.

Withdrawal

Under certain circumstances, a client may be required to withdraw from representing a client, such as where an attorney knows a client is using their services to conduct illegal activity. An attorney may also be permitted to withdraw under certain circumstances. However, in any case, an attorney is required to consider how and whether withdraw will effect his client's case, and must take steps not to prejudice their interests.

Here, there is nothing to indicate that Len must withdraw. Although Claire's conduct in filing multiple lawsuits is questionable, it does not meet any of the

criteria for mandatory withdraw. Accordingly, it appears Len is seeking to permissively withdraw and thus would not be required to withdraw from representation of Claire.

Permissive Withdrawal

An attorney may permissively withdraw from representation where the client has manifested an inability to pay despite repeated requests, where a potential conflict presents a strong likelihood of a future conflict, among other reasons. He also must take care not to prejudice to his client's case. Accordingly, he must provide his client with sufficient notice and reasonable rationale for withdrawing so as to give the client an opportunity to obtain counsel elsewhere.

Here, there is no indication that Len wants to withdraw for reasons surrounding payment or a potential conflict. Rather, it seems clear he simply does not want to represent Claire based on what Hannah has told her about her multiple lawsuits against the hotel. This would not be a sufficient reason for Len to withdraw from representation of Claire. Thus, he has violated his duty of loyalty by attempting to withdraw without sufficient justification. Moreover, Len's method for attempting to withdraw does not give Claire adequate notice, and should not have simply been set forth in a registered letter stating only that he could no longer represent her.

DUTY OF COMPETANCE

An attorney owes a client a duty of competent representation using the skill, thoroughness and professionalism required of the matter. In California, an attorney is not incompetent unless they "recklessly or repeatedly" fail to render competent representation.

Duty to Communicate with Client

An attorney has a duty to timely communicate things to their client. Here, Len made several attempts to communicate with his client by email, and later by registered mail. He called, sent emails, and mailed to registered letters aimed at

communicating his attempt to reach Claire. While Len likely will not be able to permissively withdraw from presentation, he did meet his duty to timely communicate with Claire by trying to reach her through various media without success.

Safeguarding Client Property

An attorney must safeguard his client's property and not allow it to be damaged or destroyed. Here, Len threw Claire's clothes, important evidence in her case, in his closet. It was later taken out with his drycleaning and cleaned, essentially rendering it useless at trial, and fundamentally prejudicing his client's case. Len had a duty to make sure this evidence was safeguarded in the state it was in, and his failure to do so will prejudice Claire's case. Len has thus violated his duty of competence under the ABA Rules, and likely, given his reckless behavior in allowing the clothes to be drycleaned, the CA Rules as well.

Question #2 Final Word Count = 1015

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